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Attorneys for Defendants
 and Counterclaim Plaintiff
 Podfitness, Inc.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 (OAKLAND DIVISION)

16 APPLE INC.,

17 Plaintiff,

18 v.

19 PODFITNESS, INC., and DOES 1-100,
 20 inclusive,

21 Defendants.

Case No. C 06-5805 SBA

**DECLARATION OF JAMES E.
 MAGLEBY IN SUPPORT OF
 STIPULATED REQUEST FOR ORDER
 CHANGING TIME**

Honorable Sandra B. Armstrong

22 PODFITNESS, INC.,

23 Counterclaim Plaintiff

24 v.

25 APPLE INC.,

26 Counterclaim Defendant

1 I, James E. Magleby, declare as follows:

2 1. I am a partner of Magleby & Greenwood, P.C., counsel of record in this action for
3 Podfitness, Inc. ("Podfitness"). I am a member of the Bar of the State of Utah and will be
4 admitted to this Court pending approval of my *pro hac vice* application. I have personal
5 knowledge of the matters stated in this declaration and would testify truthfully to them if called
6 upon to do so.

7 2. My review of the file indicates that on August 1, 2007, Apple filed an amended
8 complaint adding causes of action for cybersquatting and for breach of contract.

9 3. My review of the file indicates that Podfitness answered the amended complaint
10 on August 31, 2007, and counterclaimed, alleging intentional and negligent interference with
11 contractual relations, negligent interference with prospective economic advantage, and unlawful,
12 unfair and deceptive practices in violation of the California Business and Professions Code.
13 Podfitness' counterclaims arose from conduct which Podfitness alleges occurred during the
14 discovery process, and after the scheduling order had been put into place.

15 4. My review of the file also indicates that on September 19, 2007, Podfitness'
16 outside counsel, Workman Nydegger, filed its motion to withdraw as counsel. Subsequently, on
17 October 16, 2007, in-house counsel for Podfitness, Steve Hutchinson, filed notice with the Court
18 that he was no longer employed with Podfitness. On October 31, 2007, the Court permitted a
19 withdrawal of outside counsel and ordered a temporary stay of the case for thirty (30) days
20 pending Podfitness' engagement of substitute counsel.

21 5. Podfitness retained my firm, Magleby & Greenwood, P.C. as new outside counsel
22 on or about November 30, 2007, and retained local California counsel, Kerr & Wagstaffe, LLP
23 on December 6, 2007.

24 6. I have been informed that during the months of August, September, October and
25 November 2007, the parties participated in numerous settlement negotiations. Ultimately, the
26 parties did not succeed in reaching a settlement.

27

28

7. There have been no prior modifications to the schedule set forth in the Court's January 25, 2007 Order. The requested time modification would re-set the entire schedule for this case, and the parties would be prepared to try the case in mid-October 2008.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed this 19th day of December, 2007, at Salt Lake City, Utah.

/s/ James E. Magleby
James E. Magleby

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PROOF OF SERVICE

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On December 19, 2007, I caused a copy of the following document(s):

**DECLARATION OF JAMES E. MAGLEBY IN SUPPORT OF STIPULATED
REQUEST FOR ORDER CHANGING TIME**

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

James M. Wagstaffe
Kerr & Wagstaffe LLP
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Attorneys For Defendant
PODFITNESS, INC.

☒ **MAIL:** Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.

☐ **ELECTRONIC MAIL:** Such document was transmitted by electronic mail to the addressees' email addresses as stated above.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on December 19, 2007, at San Diego, California.

/s/Nicole C. Pino

Nicole C. Pino